



April 1, 2005

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## ENGROSSED HOUSE BILL No. 1265

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DIGEST OF HB 1265 (Updated March 30, 2005 3:26 pm - DI 87)

**Citations Affected:** IC 4-22; IC 34-30.

**Synopsis:** Justification for rulemaking. Requires an agency that publishes a notice of intention to adopt a rule that imposes a requirement or cost on a regulated entity to include in the notice a statement justifying the requirement or the cost. Provides that the statement must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary. Requires a state agency to assign a small business regulatory coordinator for each administrative rule proposed or adopted by the agency. Requires the agency to list the coordinator's contact information in certain published notices and rules. Requires the coordinator to serve as a liaison between the agency and small businesses subject to the rule. Requires, in the case of a rule adopted by the department of environmental management (IDEM) or its boards, the coordinator for the rule to work with IDEM's ombudsmen and office of voluntary compliance to coordinate services provided to affected small businesses. Requires an agency's director to

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**Effective:** July 1, 2005.

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(SENATE SPONSORS — DILLON, MERRITT, YOUNG R MICHAEL,  
ROGERS)

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January 11, 2005, read first time and referred to Committee on Government and Regulatory Reform.

February 14, 2005, reported — Do Pass.

February 17, 2005, read second time, ordered engrossed.

February 18, 2005, engrossed.

February 21, 2005, read third time, passed. Yeas 94, nays 0.

#### SENATE ACTION

February 24, 2005, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

March 31, 2005, amended, reported favorably — Do Pass.

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submit an annual report to the legislative council and the Indiana economic development corporation concerning the activities of the agency's coordinators during the state fiscal year. Provides that a small business that gives voluntary notice to an agency of a violation of a rule is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business: (1) provides the notice within 45 days after discovering the violation; (2) corrects the violation within the time agreed to by the agency and the small business; and (3) cooperates with any investigation by the agency. Provides that immunity is not available if: (1) the violation resulted in serious harm or endangered the public; (2) the small business received a competitive advantage; or (3) the small business has a pattern of rule violations. Provides that certain information provided by a small business relating to a rule violation is confidential. Provides that voluntary notice of a rule violation by a small business is not admissible as evidence, other than in an agency proceeding, to prove liability.

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April 1, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1265

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-22-2-24 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. (a) An agency shall  
3 notify the public of its intention to adopt a rule by complying with the  
4 publication requirements in subsections (b) and (c).  
5 (b) The agency shall cause a notice of a public hearing to be  
6 published once in one (1) newspaper of general circulation in Marion  
7 County, Indiana. To publish the newspaper notice, the agency shall  
8 directly contract with the newspaper.  
9 (c) The agency shall cause a notice of public hearing and the full  
10 text of the agency's proposed rule (excluding the full text of a matter  
11 incorporated by reference under section 21 of this chapter) to be  
12 published once in the Indiana Register. To publish the notice and  
13 proposed rule in the Indiana Register, the agency shall submit the text  
14 to the publisher. The agency shall submit the rule in the form required  
15 by section 20 of this chapter and with the documents required by  
16 section 21 of this chapter. The publisher shall determine the number of  
17 copies of the rule and other documents to be submitted under this

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1 subsection.

2 (d) The agency shall include **the following** in the notice required by  
3 subsections (b) and (c):

4 (1) A statement of the date, time, and place at which the public  
5 hearing required by section 26 of this chapter will be convened.

6 (2) A general description of the subject matter of the proposed  
7 rule. ~~and~~

8 **(3) In a notice published after June 30, 2005, a statement**  
9 **justifying any requirement or cost that is:**

10 **(A) imposed on a regulated entity under the rule; and**

11 **(B) not expressly required by:**

12 **(i) the statute authorizing the agency to adopt the rule;**  
13 **or**

14 **(ii) any other state or federal law.**

15 **The statement required under this subdivision must include**  
16 **a reference to any data, studies, or analyses relied upon by the**  
17 **agency in determining that the imposition of the requirement**  
18 **or cost is necessary.**

19 ~~(3)~~ **(4) An explanation that:**

20 **(A) the proposed rule; and**

21 **(B) any data, studies, or analysis referenced in a statement**  
22 **under subdivision (3);**

23 may be inspected and copied at the office of the agency.

24 However, inadequacy or insufficiency of the subject matter description  
25 **under subdivision (2) or a statement of justification under**  
26 **subdivision (3) in a notice does not invalidate a rulemaking action.**

27 (e) Although the agency may comply with the publication  
28 requirements in this section on different days, the agency must comply  
29 with all of the publication requirements in this section at least  
30 twenty-one (21) days before the public hearing required by section 26  
31 of this chapter is convened.

32 (f) This section does not apply to the solicitation of comments under  
33 section 23 of this chapter.

34 SECTION 2. IC 4-22-2-28.1 IS ADDED TO THE INDIANA CODE  
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
36 1, 2005]: **Sec. 28.1. (a) This section applies to a rule for which the**  
37 **notice required by section 23 of this chapter is published by an**  
38 **agency after June 30, 2005.**

39 **(b) As used in this section, "coordinator" refers to the small**  
40 **business regulatory coordinator assigned to a rule by an agency**  
41 **under subsection (e).**

42 **(c) As used in this section, "director" refers to the director or**

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1 other administrative head of an agency.

2 (d) As used in this section, "small business" means any person,  
3 firm, corporation, limited liability company, partnership, or  
4 association that:

5 (1) is actively engaged in business in Indiana and maintains its  
6 principal place of business in Indiana;

7 (2) is independently owned and operated;

8 (3) employs not more than one hundred (100) full-time  
9 employees; and

10 (4) has gross annual receipts of not more than five million  
11 dollars (\$5,000,000).

12 (e) For each:

13 (1) rulemaking action; and

14 (2) rule finally adopted as a result of a rulemaking action;

15 by an agency under this chapter, the agency shall assign one (1)  
16 staff person to serve as the agency's small business regulatory  
17 coordinator with respect to the proposed or adopted rule. The  
18 agency shall assign a staff person to a rule under this subsection  
19 based on the person's knowledge of, or experience with, the subject  
20 matter of the rule. A staff person may serve as the coordinator for  
21 more than one (1) rule proposed or adopted by the agency if the  
22 person is qualified by knowledge or experience with respect to each  
23 rule. Subject to subsection (f), in the case of a proposed rule, the  
24 agency's notice of intent to adopt the rule under section 23 of this  
25 chapter must include the name, address, telephone number, and  
26 electronic mail address of the small business coordinator for the  
27 proposed rule. Subject to subsection (f), in the case of a rule finally  
28 adopted by the agency, the final rule, as published in the Indiana  
29 Register and the Indiana Administrative Code, must include the  
30 name, address, telephone number, and electronic mail address of  
31 the coordinator.

32 (f) This subsection applies to a rule adopted by the department  
33 of environmental management or any of the boards (as defined in  
34 IC 13-11-2-18) under IC 13-14-9. In addition to the information  
35 required under subsection (e), the department or the board shall  
36 include in the notice provided under section 23 of this chapter and  
37 in the publication of the final rule in the Indiana Register and the  
38 Indiana Administrative Code:

39 (1) a statement of the resources available to regulated entities  
40 through the technical and compliance assistance program  
41 established under IC 13-28-3;

42 (2) the name, address, telephone number, and electronic mail

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address of the ombudsman designated under IC 13-28-3-2;  
and

(3) if applicable, a statement of:

(A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and

(B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under IC 13-28-5-2(3).

The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (g) and IC 13-28-3. If applicable, the coordinator assigned to the rule under subsection (e) shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under subsection (g) and IC 13-28-5.

(g) The coordinator assigned to a rule under subsection (e) shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

(1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.

(2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.

(3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.

(4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted under IC 13-14-9, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

(h) The coordinator assigned to a rule under subsection (e) shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this

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subsection shall be made available:

(1) for public inspection and copying at the offices of the agency under IC 5-14-3; and

(2) electronically through electronic gateway access.

(i) The coordinator assigned to a rule under subsection (e) shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

(1) not later than ten (10) days after the date on which the rule is file stamped by the secretary of state under section 35 of this chapter; and

(2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

(j) Not later than November 1 of each year, the director shall:

(1) compile the records received from all of the agency's coordinators under subsection (i);

(2) prepare a report that sets forth:

(A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

(B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;

(C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;

(D) the agency's costs in complying with this section during the most recent state fiscal year; and

(E) the projected budget required by the agency to comply with this section during the current state fiscal year; and

(3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the Indiana economic development corporation established by IC 5-28-3.

SECTION 3. IC 4-22-2-28.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under IC 13-14-9 by the

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department of environmental management or any of the boards (as defined in IC 13-11-2-18), the procedures set forth in IC 13-30-4-3 and IC 13-30-7 apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section 28.1(d) of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under this chapter is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business does the following:

(1) Provides written notice of the violation to the agency not later than forty-five (45) days after the small business knew or should have known that the violation occurred.

(2) Corrects the violation within a time, which in no case may be less than ninety (90) days after the date of the notice described in subdivision (1), agreed to by the agency and the small business.

(3) Cooperates with any reasonable request by the agency in any investigation initiated in response to the notice.

(d) A small business is not immune from civil or criminal liability relating to a violation of which the small business provides notice under subsection (c) if any of the following apply:

(1) The violation resulted in serious harm or in imminent and substantial endangerment to the public health, safety, or welfare.

(2) The violation resulted in a substantial economic benefit that afforded the small business a clear advantage over the small business's competitors.

(3) The small business has a pattern of continuous or repeated violations of the rule at issue or any other rules of the agency.

(e) Information that a small business provides under this section, including actions and documents that identify or describe the small business, to an agency in providing notice of the small business's actual or potential violation of a rule adopted by the agency is confidential, unless a clear and immediate danger to the public health, safety, or welfare or to the environment exists. Information described in this subsection may not be made available for use by the agency for purposes other than the purposes of this section without the consent of the small business.

(f) Voluntary notice of an actual or a potential violation of a rule that is provided by a small business under subsection (c) is not

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1     **admissible as evidence in a proceeding, other than an agency**  
2     **proceeding, to prove liability for the rule violation or the effects of**  
3     **the rule violation.**

4     SECTION 4. IC 34-30-2-3.8 IS ADDED TO THE INDIANA CODE  
5     AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
6     1, 2005]: **Sec. 3.8. IC 4-22-2-28.2 (Concerning voluntary notice by**  
7     **a small business of an actual or a potential violation of an agency**  
8     **rule).**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1265, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BUCK, Chair

Committee Vote: yeas 11, nays 1.

## COMMITTEE REPORT

Madam President: The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred House Bill No. 1265, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 10, delete "rule, other" and insert "**rule; and**".

Page 2, delete lines 11 through 12.

Page 2, line 22, delete "and" and insert "**and**".

Page 2, after line 35, begin a new paragraph and insert:

"SECTION 2. IC 4-22-2-28.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28.1. (a) This section applies to a rule for which the notice required by section 23 of this chapter is published by an agency after June 30, 2005.**

**(b) As used in this section, "coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection (e).**

**(c) As used in this section, "director" refers to the director or other administrative head of an agency.**

**(d) As used in this section, "small business" means any person, firm, corporation, limited liability company, partnership, or association that:**

- (1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;**
- (2) is independently owned and operated;**
- (3) employs not more than one hundred (100) full-time employees; and**
- (4) has gross annual receipts of not more than five million dollars (\$5,000,000).**

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(e) For each:

(1) rulemaking action; and

(2) rule finally adopted as a result of a rulemaking action; by an agency under this chapter, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each rule. Subject to subsection (f), in the case of a proposed rule, the agency's notice of intent to adopt the rule under section 23 of this chapter must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule. Subject to subsection (f), in the case of a rule finally adopted by the agency, the final rule, as published in the Indiana Register and the Indiana Administrative Code, must include the name, address, telephone number, and electronic mail address of the coordinator.

(f) This subsection applies to a rule adopted by the department of environmental management or any of the boards (as defined in IC 13-11-2-18) under IC 13-14-9. In addition to the information required under subsection (e), the department or the board shall include in the notice provided under section 23 of this chapter and in the publication of the final rule in the Indiana Register and the Indiana Administrative Code:

(1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under IC 13-28-3;

(2) the name, address, telephone number, and electronic mail address of the ombudsman designated under IC 13-28-3-2; and

(3) if applicable, a statement of:

(A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and

(B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under IC 13-28-5-2(3).

The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the

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office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (g) and IC 13-28-3. If applicable, the coordinator assigned to the rule under subsection (e) shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under subsection (g) and IC 13-28-5.

(g) The coordinator assigned to a rule under subsection (e) shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

- (1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.
- (2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.
- (3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.
- (4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted under IC 13-14-9, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

(h) The coordinator assigned to a rule under subsection (e) shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

- (1) for public inspection and copying at the offices of the agency under IC 5-14-3; and
- (2) electronically through electronic gateway access.

(i) The coordinator assigned to a rule under subsection (e) shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

- (1) not later than ten (10) days after the date on which the rule is file stamped by the secretary of state under section 35 of

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this chapter; and

(2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

(j) Not later than November 1 of each year, the director shall:

(1) compile the records received from all of the agency's coordinators under subsection (i);

(2) prepare a report that sets forth:

(A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

(B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;

(C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;

(D) the agency's costs in complying with this section during the most recent state fiscal year; and

(E) the projected budget required by the agency to comply with this section during the current state fiscal year; and

(3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the Indiana economic development corporation established by IC 5-28-3.

SECTION 3. IC 4-22-2-28.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under IC 13-14-9 by the department of environmental management or any of the boards (as defined in IC 13-11-2-18), the procedures set forth in IC 13-30-4-3 and IC 13-30-7 apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section 28.1(d) of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under this chapter is immune from civil or criminal liability resulting from an agency action relating to the violation if the small business does the following:

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- (1) Provides written notice of the violation to the agency not later than forty-five (45) days after the small business knew or should have known that the violation occurred.
- (2) Corrects the violation within a time, which in no case may be less than ninety (90) days after the date of the notice described in subdivision (1), agreed to by the agency and the small business.
- (3) Cooperates with any reasonable request by the agency in any investigation initiated in response to the notice.
- (d) A small business is not immune from civil or criminal liability relating to a violation of which the small business provides notice under subsection (c) if any of the following apply:
  - (1) The violation resulted in serious harm or in imminent and substantial endangerment to the public health, safety, or welfare.
  - (2) The violation resulted in a substantial economic benefit that afforded the small business a clear advantage over the small business's competitors.
  - (3) The small business has a pattern of continuous or repeated violations of the rule at issue or any other rules of the agency.
- (e) Information that a small business provides under this section, including actions and documents that identify or describe the small business, to an agency in providing notice of the small business's actual or potential violation of a rule adopted by the agency is confidential, unless a clear and immediate danger to the public health, safety, or welfare or to the environment exists. Information described in this subsection may not be made available for use by the agency for purposes other than the purposes of this section without the consent of the small business.
- (f) Voluntary notice of an actual or a potential violation of a rule that is provided by a small business under subsection (c) is not admissible as evidence in a proceeding, other than an agency proceeding, to prove liability for the rule violation or the effects of the rule violation.

SECTION 4. IC 34-30-2-3.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.8. IC 4-22-2-28.2 (Concerning voluntary notice by a small business of an actual or a potential violation of an agency rule).".

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Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to HB 1265 as printed February 15, 2005.)

RIEGSECKER, Chairperson

Committee Vote: Yeas 6, Nays 0.

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